

Federal Reserve System

§ 211.4

(i) The credit extension is reported promptly to the branch's home office; and

(ii) Any extension of credit exceeding \$100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement corporations.

(a) *Organization—(1) Board authority.* The Board shall have the authority to approve:

(i) The establishment of Edge corporations; and

(ii) Investments by member banks and bank holding companies in Agreement corporations.

(2) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(3) *Name.* The name shall include *international, foreign, overseas*, or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(4) *FEDERAL REGISTER notice.* The Board shall publish in the FEDERAL REGISTER notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(6) *Authority to commence business.* (i) After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(ii) Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(7) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(8) *Shareholders meeting.* An Edge Corporation shall provide in its bylaws that:

(i) A shareholders meeting shall be convened at the request of the Board

within five days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend any such meeting in person or by proxy may result in removal or barring of such shareholders or any representatives from further participation in the management or affairs of the Edge corporation.

(b) *Nature and ownership of shares*—(1) *Shares.* (i) Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart.

(ii) The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(1) Any limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(2) Any rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph.

(iii) Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as the Board may require;

(B) Ensure that any transaction by an Edge corporation with an affiliate⁴ is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) Invest no more than 10 percent of the institution's capital and surplus in the aggregate amount of stock held in all Edge corporations; and

(E) In the case of a foreign institution not subject to section 4 of the BHC Act:

(1) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(2) Give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(3) *Change in control*—(i) *Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation. The Board may extend the 60-day period for an additional 30 days

⁴For purposes of this paragraph, *affiliate* means any organization that would be an *affiliate* under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

by notifying the acquiring party. A notice under this paragraph need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(ii) *Board review.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(5) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches*—(1) *Prior notice.*

(i) An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section.

(3) *Expiration of authority.* Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and other depository institutions (as described in part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26

U.S.C. 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

- (i) Cash;
- (ii) Deposits with depository institutions, as described in part 204 of this chapter (Regulation D), and other Edge and Agreement corporations;
- (iii) Money market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and
- (iv) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(3) *Borrowings.* An Edge corporation may:

- (i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in part 204 of this chapter (Regulation D)) or issue obligations to the United States or any of its agencies or instrumentalities;
- (ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;
- (iii) Issue long-term subordinated debt that does not qualify as a *deposit* under part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

- (i) Finance the following:
 - (A) Contracts, projects, or activities performed substantially abroad;
 - (B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed, including acquisitions of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,⁵ if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities; foreign persons; and organizations of the type described in paragraph 211.4(e)(1)(ii)(G) of this section.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

- (i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

⁵ *Readily ascertainable events* include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,⁶ and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may in-

vest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*—(1) *Eligible investments.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly:

(i) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided however that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues are attributable to activities not listed in paragraph (d) of this section; and

(iii) Make portfolio investments in an organization, provided however that:

(A) The total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not permissible for joint ventures do not exceed:

(1) 40 percent of the total equity of the organization, when combined with

⁶For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.